IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL Nos. 2169 of 1994, 3302 of 1997 to 3325 of 1997 and 2387 of 2003 to 2396 of 2003
with
CIVIL APPLICATIONS NOS. 7929 of 2003 to 7934 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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ADDL. SPECIAL LAND ACQUISITIONOFFICER

Versus

HEIRS OF RAMESHBHAI CHHOTABHAIPATEL

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Appearance:

MR ARUN D OZA, GOVERNMENT PLEADER for appellants in F.A. Nos. 2169 of 1994, 2387 to 2396 of 2003.

MR HL JANI, AGP for appellant in F.A. Nos.3302 to 3325 of 1997.

M/s JAYKUMAR P AMIN, GHANSHYAM AMIN, KM SHETH, SANJAY AMIN, for respective respondent-claimants.

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CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS

and

HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 17/04/2004

COMMON ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE KSHITIJ R.VYAS)

These appeals under Section 54 of the Land Acquisition Act, 1849 (for short, 'the Act') read with Section 96 of the Code of Civil Procedure, 1908 are in respect of the lands acquired for the purpose of Aslali-Bareja Diversion on the Ahmedabad-Bombay National Highway No.8 and therefore, they are heard together and disposed of by this common judgment.

2.1 First Appeal No.2169 of 1994 arises out of the judgment and award dated 20th April 1993 passed by the learned Extra Assistant Judge, Ahmedabad (Rural), at Mirzapur, in Land Acquisition Case No.552 of 1987. The learned Judge while allowing the said reference partly, directed the opponents (present appellants) to pay Rs.69/- per sq.mtr. as additional compensation to the owners of Block Survey No.604 over and above the compensation already awarded by the Special Land Acquisition Officer for the acquired land.

2.2 First Appeal Nos. 3302 of 1997 to 3325 of 1997 are preferred by the appellant - Special Land Acquisition Officer, Ahmedabad, challenging the judgment and award passed in Land Acquisition Cases Nos.5/88, 7/88 to 13/88 and 15/88 to 30/88 dated 13th August 1996 by the learned 2nd Joint District Judge, Ahmedabad (Rural), at Mirzapur whereby the learned Judge partly allowed the references and directed the opponent (present appellant) to pay to the claimants Rs.75/- per sq.mtr. in all, including the amount of compensation already awarded by the Special Land Acquisition Officer in the respective cases together with 30% solatium and with interest at the rate of 9% p.a. for the period of one year from the date of taking over possession of the acquired lands, and thereafter at the rate of 15% p.a. from the expiry of that one year, till the amount is paid or deposited. The learned Judge also held that the claimants are also entitled to get 12% increase on the market value of the acquired lands for the period from 22.2.1984 to 31.7.1987 (i.e. from the date of notification under Sec.4 of the Act to the date of award), under Sec.23(1-A) of the Act.

2.3 It may be stated that the Spl. Land Acquisition Officer, by his award, dated 31.7.1987 awarded Rs.7.50

per sq.mtr. to the respective claimants which, according to the claimants, is too small an amount and therefore, reference under Sec.18 of the Act was made at the instance of the claimants before the Reference Court.

2.4 First Appeal Nos.2387 to 2396 of 2003 are preferred by the Spl.Land Acquisition Officer against the judgment and award dated 19th August 1996 passed in the L.A.Case Nos.1116 to 1125 of 1987 by the learned 2nd Joint District Judge, Ahmedabad (Rural), at Mirzapur. The learned Judge while partly allowing the references, directed the present appellant to pay Rs.69/- per sq.mtr. as additional compensation to the respective claimants in their respective cases together with 30% solatium with interest at the rate of 9% p.a. for the period of one year from the date of taking over possession of the acquired lands and thereafter at the rate of 15% p.a. from the expiry of that one year till the amount is paid or deposited.

3.1 The Reference Court also held that the claimants are entitled to get 12% increase in the market value of the acquired lands for the period from 11.6.1983 to to 21.3.1987, (i.e. from the date of taking over possession of the acquired lands to the date of award) under Sec.23(1-A) of the Act.

3.2 It is to be noted that the Reference Court while deciding the Land Acquisition Case Nos.5/88, 7/88 to 13/88 and 15/88 to 30/88 and Land Acquisition Cases Nos.1116/87 to 1125/87, for arriving at the market value of the acquired lands, relied upon the judgment rendered in L.A. Case No.552 of 1987 (subject matter of First Appeal No.2169/94). It is observed by the Reference Court that,

> "The claimant Pareshbhai Ishvarbhai Patel in his deposition at Exh.15 has stated on oath that the lands of Block No.604 of village Aslali came to be acquired for the same public purpose, and the Spl.L.A.Officer, has awarded Rs.6.00 per sq.mt. and feeling aggrieved by that award, the owner of that lands have filed land Reference Case No.552/87 and wherein the then Assistant Judge Shri S.A.Makhija by his award dtd. 20th April 1993 awarded Rs.69/- per sq.mt. by way of additional compensation, and according to the claimants, when the lands of same village are acquired for the same public purpose they are required to be awarded compensation on the judgment rendered in L.A. Case No.552/87 and in

the above context, it may be noted that in L.A. Case No.552/87 the notification u/s.4 came to be published on 20.12.1984 while in the cases on hand, the notification u/s.4 came to be published on 15.10.1983 and came to be published in the Government Gazette on 5.1.1984, and though there is a span of one year approximately, so far, the date of notification u/s.4 is concerned, then also the escalation between the two dates of notification u/s.4 is not much more, and therefore, in my opinion, when the lands of same village came to be acquired and that too for the same public purpose, and when there is no much more difference between the dates of the notifications, in my opinion, the claimants are entitled to get the compensation on the basis of the judgment rendered in L.A. Case No.552/87 vide Exh.25."

4.1 From the evidence of Pareshbhai Patel, it is clear that the acquired lands are situated on the National Highway or in village Aslali itself which are situated on the Ahmedabad-Bombay National Highway No.8 which is at a distance of about 1/2 km. from the boundary of Ahmedabad Municipal Corporation. It is also clear from the evidence that the facility of irrigation was available in the acquired lands. Thus, taking into consideration the situation of the lands of the claimants in First Appeal No.3302 and other allied matters and First Appeal No.2387 of 1997 and other allied matters, the lands acquired by the Spl.Land Acquisition Officer in L.A. Case No.552/87 are of the same village and considering the potentiality of the lands, the Reference Court was justified in awarding compensation on the basis of the provisions of the judgment rendered in L.A. Case No.552/87.

5.1 In the case of Bhim Singh and ors. v. State of Haryana and anr., reported in (2003) 10 SCC 529, the Apex Court has laid down that when compensation has already been fixed by the High Court in earlier proceedings and when in one such proceeding the Apex Court has already approved the rate fixed, then according to the Apex Court, the best method would be to look at the earlier judgments and awards and that therefore, the High Court cannot be faulted for having fixed compensation on the basis of earlier judgments.

5.2 A similar view is also expressed in the case of Karan Singh and ors. v. Union of India, reported in (1997) 8 SCC 186 wherein it is held that the judgments of

the Courts in Land Acquisition cases or awards given by the Land Acquisition Officer can be relied upon as a good piece of evidence for determining the market value of the land acquired under certain circumstances. One of the circumstances being that such an award or judgment of the Court of law must be a previous judgment. It is only the previous judgment of a Court or an award which can be made the basis for assessment of the market value of the acquired land subject to party relying on such judgment to adduce evidence for showing that due regard being given to all attendant facts it could form the basis for fixing the market value of acquired land.

6.1 In view of the above, in our opinion, the Reference Court was justified in awarding Rs.69/- per sq.mtr. by way of additional compensation to the claimants on the basis of the previous award rendered in L.A. Case No.552/87.

6.2 Since First Appeal No.2169/94 arises out of the judgment and award rendered in L.A. Case No.552/87, the question requires to be considered is as to whether the Reference Court was justified in awarding the additional compensation of Rs.69/0 or not.

7.1 The learned Government Counsel appearing for the appellants submitted that the Reference Court has committed an error in appreciating the evidence on record as well as applying the principles for determining the market value of the acquired lands, which is not recognised by law. By inviting our attention to Exh.37, it was submitted that the same is not a reliable piece of evidence for arriving at a just and reasonable compensation payable to the claimants. It was also submitted that Exh.37 is not a sale agreement and it is for a small plot of land and therefore, the sale instance does not have any evidentiary value so as to determine the market value of the lands in question.

7.2 In the instant case, one Vijay Rameshbhai Patel has been examined at Exh.21 on behalf of the claimants, who is the son of original claimant. He has given details about the lands acquired and has given details about issuance of the notification under Sec.4 and 6 of the Act. He has stated that the land Acquisition Officer has fixed the compensation at Rs.6/- per sq.mtr. which according to him, is too meagre and unreasonable. According to him, the reasonable compensation would be Rs.75/- per sq.mtr. He has given the details about the situation of the acquired lands. He has stated that the acquired lands are of village Aslali which is adjoining

the city of Ahmedabad and the part of village is in Ahmedabad Municipal Corporation limits. The village has facility of canal, tubewells, and Kharikat Canal. He has given details of the agricultural yield of the acquired lands. He has also given further details of the facilities of ST as well as AMTS bus services, number of godowns situated near the acquired lands, location of 4-5 big hotels situated near the land and other facilities. He has also produced the registered Sale Deed at Exh.24, extracts from the record of rights of Block No.717 Exh.25. Besides, he has produced the compensation awarded for the adjacent land at Survey No. 1051 at Rs.68/- per sq.mtr. at Exh.37. In the said proceedings, the preliminary notification was published on 8.2.1979 and the award was published on 30.3.1983. One more witness, Chandubhai Hemabhai Patel is examined at Exh.39 who has produced the agreement of Sale with respect to the land of Block No.717 at the rate of Rs.60/- per sq.yd, dated 4.3.1983 at Exh.24.

7.3 Considering the above evidence, the Reference Court has observed that there is no proximate and relevant sale instances which has been produced and therefore, reliance can be placed on the previous award of the Land Acquisition Officer at Exh.37. As Exh.37 is five years prior to the preliminary notification of the case on hand, the claimants are entitled for additional compensation. In paragraph 12 of the judgment, the Reference Court has considered that :

> "12. So far the facts of this case are concerned, Exh.37 can be considered reliable piece of evidence for assessing just and reasonable compensation payable to the claimants. The learned L.A.Officer has awarded Rs.68/- per sq.mt. in that case. But after deducting 1/3, it will come to Rs.45/-. The award was passed about 5 years back and as such, the claimants are entitled for some reasonable increase, as held in the case reported at page 150 of All India Reports, Vol.22 wherein their Lordships of Punjab and Haryana High Court, held that increase at the rate of 12% fro every year can be said to be a reasonable increase. If we apply the rational of this case, then the claimants will be entitled for about 60% increase. The land has got potential value being on the main national highway and bordering Ahmedabad City for Commercial and Industrial use and this factor is also to be considered while assessing reasonable compensation. In considering all these factors,

in my view of the matter, Rs.75/- per sq.mt. can be said to be just and reasonable sum payable as compensation to the claimants."

7.4 As observed earlier, in absence of proximate and relevant sale instances, the Reference Court is justified in placing reliance on the earlier judgment for awarding additional compensation in the present case. Since there is a time gap of five years in the issuance of the preliminary notification in Exh.37 and the case on hand, the Reference Court was justified in giving reasonable increase at the rate of 12% per year and was thus justified in awarding the additional compensation at Rs.69/- per sq.mtr. which, in our opinion, is just and proper warranting no interference.

8.1 In the result, we see no merit in any of the appeals and all the appeals fail and they are dismissed. There shall be no order as to costs. It goes without saying that the Reference Court shall disburse the amount deposited by the appellants forthwith to the claimants.

8.2 In view of the order passed in the main appeals, the Civil Applications for stay do not survive and they are rejected.

(Kshitij R. Vyas, J.)

(K.S. Jhaveri, J.)

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